

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8513 of 1998

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT Sd/-

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements? Yes.
2. To be referred to the Reporter or not? No. :
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement? No.
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No.
5. Whether it is to be circulated to the Civil Judge? No:

SAURABH PUNJABHAI PATEL

Versus

DISTRICT MAGISTRATE

Appearance:

HL PATEL ADVOCATES for Petitioner
MS HANSABEN PUNANI ADD. GOVERNMENT PLEADER
for Respondent No. 1, 2, 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 22/06/1999

ORAL JUDGEMENT

Heard the learned advocates for the respective
parties.

2. The petitioner has challenged the order of
preventive detention dated 3rd July, 1998 made by the
District Magistrate, Anand under the powers conferred
upon him under Sub-section (2) of Section 3 of the

Gujarat Prevention of Anti-social Activities Act, 1985
(hereinafter referred to as 'the Act').

3. The grounds of detention served upon the petitioner along with the order of detention reveal that the petitioner is a bootlegger and is continuously indulging into bootlegging activities. Three offences have been registered against the petitioner for violation of Prohibition Law and are pending for trial before the concerned Court. The last of the said offences has been registered on 12th January, 1998. Apart from the above three offences registered against the petitioner, the detaining authority has also received some further information through witnesses whose identity has been withheld. The statements of the said three witnesses reflect upon antisocial activities carried on by the petitioner. More particularly, the witness no.2 has stated that petitioner has been supplying liquor to the truck drivers on the High Way. The above referred three statements have been recorded by the concerned authority in the month of February, 1998.

4. Amongst other grounds, the learned advocate Mr. Pandya appearing for the petitioner has submitted that the order of detention has not been made immediately after the offences were registered against the petitioner or the incriminating statements were made by the concerned witnesses in the month of February, 1998. The detaining authority has dealt with the same in the month of July, 1998 which indicates that the activities of the petitioner were not considered to be prejudicial to the maintenance of public order, and therefore, the order of preventive detention made against the petitioner was not warranted. He has further contended that from the counter affidavit made by the detaining authority, it is disclosed that the detaining authority has also considered the statement of one Shri Yasinbhai Gulamnabi Vora, recorded in the course of investigation of the offence registered as 5024 of 1998 in Khambholaj Police Station. However neither the said statement is made part of the chargesheet filed in the said case, nor the said statement is made part of the documents supplied to the petitioner along with grounds of detention. Thus the detaining authority is alleged to have withheld the material relied upon by him, adversely affecting the petitioner's right to make effective representation against the order of detention.

5. Though the detaining authority as well as the State Government have contested the petition by filing their respective affidavits, undue delay in making the

order of detention, five months after the last of the offences was registered against the petitioner and recording of the statements of the witnesses, has not been explained. On perusal of Paragraph 16 of the affidavit, it is evident that the vehicle seized from the petitioner belonged to one Yasinbhai Gulamnabi Vora and that the said Yasinbhai Gulamnabi Vora had given a statement before the Police. The said statement of Yasinbhai Gulamnabi Vora was before the detaining authority while making the order of detention and the same has been taken into consideration. It is not disputed that the said statement of Yasinbhai Gulamnabi Vora is not made part of the order of detention, nor has it been supplied to the petitioner. It is not disputed that the said statement was not supplied to the petitioner along with chargesheet either. Mr. Pandya has made categorical statement that the said statement has not been supplied with the chargesheet either.

6. In above view of the matter, relevant documents having not been supplied to the petitioner, his continued detention is not justified.

7. Petition is, therefore, allowed. The impugned order dt. 3rd July, 1998 Annexure A to the petition is quashed and set aside. Rule is made absolute. The petitioner, unless his detention is required in some other case, be released forth with.

Date: 22/6/1999. -----
(ccshah)